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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.         | CONFIRMATION NO. |
|---|-------------|----------------------|-----------------------------|------------------|
| 10/812,672  | 03/30/2004  | Theodore John Cole   | VPI-001                     | 3562             |
| 22506   | 7590        | 10/04/2005           |                             |                  |
| JAGTIANI + GUTTAG<br>10363-A, DEMOCRACY LANE<br>FAIRFAX, VA 22030 |             |                      | EXAMINER<br>ARNOLD, ERNST V |                  |
|   |             |                      | ART UNIT                    | PAPER NUMBER     |
|   |             |                      | 1616                        |                  |
| DATE MAILED: 10/04/2005   |             |                      |                             |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/812,672

Applicant(s)

COLE ET AL.

Examiner

Ernst V. Arnold

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/30/2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

### **DETAILED ACTION**

The Examiner acknowledges receipt of application 10/812,672 filed on 03/30/04.

Claims 1-20 are pending and are presented for examination on the merits.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear to the Examiner the exact nature of "rebuilt with quartz". The Examiner will interpret the claims as they read upon quartz. Applicant is advised that "ryolite" is known in the art as rhyolite and "malchite" is known as malachite. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-6 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Instant claims 1-6 are drawn to a product, which is a naturally occurring element combination. The Examiner interprets "naturally

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occurring element combination" to mean a mixture that is found in nature. Therefore, the Examiner interprets the naturally occurring element combination to be a product of Nature. By applicant's own admission, the product of instant claim 1 is a product of nature, which is non-statutory subject matter. Claims 1-6 are included here, because the claims are drawn to naturally occurring element combinations.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 7-13, 16 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Docter (US 6,143,946).

Docter discloses a therapeutic mat containing a plurality of micro-crystals dispersed throughout a hydrogel in the mat (Abstract; column 1, lines 59-67 and claim 1). Examples of micro-crystals are quartz, ruby, emerald, opal, zircon, amber, jade, diamond and manganese (Column 2, lines 63-67 and claims 4 and 8). Docter discloses that the mat can be worn on the body and has straps to wrap around body parts to support the mat in a fixed position therefore reading on instant claims 7-8, 16, and 18-20 (Figures 1-5 and Column 3, lines 8-22). Please note that the Examiner interprets the device of Docter to have a number of components (mat, straps, hydrogel, a plurality of micro-crystals) and would be provided with instructions on its use. When worn about the

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head the Examiner interprets the therapeutic mat to be a hat and thus an article of clothing anticipating instant claim 9. The hydrogel material containing the micro-crystals is used to coat the mat and could be ingested as a result anticipating instant claims 12-13. A cabinet containing the therapeutic mat anticipates instant claim 10. Wearing the therapeutic mat of Doctor would place the plurality of crystals in close proximity to the body of the user and the user would necessarily receive the benefit of any vibrational therapy derived from the plurality of crystals, which would anticipate instant claims 16 and 18.

***Claim Rejections - 35 USC § 102***

Claims 1, 11-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Phybiosis Medicinal Clay Technical Specifications 1999.

Phybiosis discloses in their pelotherapy section a variety of medicinal clays. For example, yellow kaolin is disclosed to have high contents in quartz as well as some manganese thus reading on instant claim 1 (See specification sheet). A cabinet containing jars of the clay anticipate instant claim 10. The clay may be applied externally to the body in the form of poultices, masks, baths, creams or lotions anticipating instant claims 11-12. Yellow Kaolin can be ingested by means of one teaspoon in a glass of purified water anticipating instant claims 13-15 and 17. Covering the body with the medicinal clay yellow kaolin in the form of a mask, cream or lotion would place the active ingredients (for example, quartz and manganese) in close

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proximity to the body of the user and the user would necessarily receive the benefit of any vibrational therapy derived from the active ingredients, which would anticipate instant claims 16 and 18. The clays are sold in jars with instructions on use (printed on the jar or available on-line) thus anticipating the instant kit claims 19-20 (See Technical specification sheet).

***Claim Rejections - 35 USC § 102***

Claims 1, 3, 7-10, 16 and 18 are rejected under 35 U.S.C. 102(b) as being unpatentable over Ridgely et al. (US 6,378,138).

Ridgely et al. disclose an article of clothing that incorporates various types of healing devices such as crystals for healing various bodily ailments (Abstract; column 1, lines 36-44; and claims 1-9). The healing elements include tourmaline, smoky quartz and pyrite, for example (For listing of elements see: column 2, line 18-column 4, line 15). Tourmaline is a complex borosilicate mineral with varying amounts of aluminum, iron, magnesium, sodium, lithium, potassium, and sometimes other elements, used as a gem. Red and pink tourmaline is known as rubellite thus reading on instant claim 1. The naturally occurring elements are incorporated into the waistbands of stockings, hosiery and pantyhose as well as ankle bands hence reading on instant claims 7-9 and 11 (Column 24, lines 1-13 and column 5, lines 15-27). The Examiner interprets the ankle band as synonymous with ankle strap. Wearing the clothing places the combination of naturally occurring elements next to the body of the user, which would necessarily place

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the naturally occurring element combination in close proximity to the user; therefore reading on instant claims 16 and 18.

### ***Conclusion***

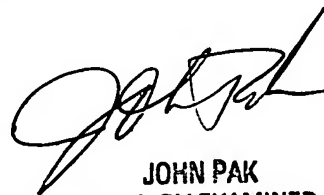
Claims 1-20 are rejected.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernst V. Arnold whose telephone number is 571-272-8509. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz can be reached on 571-272-0887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EVA

  
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